U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9474140

Date: JULY 28, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a sports journalist, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. We dismissed the Petitioner's appeal from that decision. The matter is now before us on a combined motion to reopen and reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. We will dismiss the motion.

I. MOTION REQUIREMENTS

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Under the above regulations, a motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show

proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Therefore, the filing before us is not a motion to reopen and reconsider the denial of the petition. Instead, the filing is a motion to reopen and reconsider our most recent decision.

II. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

III. ANALYSIS

The Petitioner is a broadcast journalist who is currently employed by [redacted] Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). At various times in these proceedings, the Petitioner claims to have met six criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (vii), Display at artistic exhibitions or showcases.

In the denial notice, the Director did not address the Petitioner's claims regarding the criterion numbered (vii), pertaining to artistic exhibitions or showcases; the Director determined that the Petitioner had not satisfied the other five claimed criteria. In our appellate decision, we determined that the Petitioner had satisfied criterion number (vii), but agreed with the Director that the Petitioner had not satisfied the other five. On motion, the Petitioner maintains that he has satisfied the criteria numbered (i), (iii), (iv), and (v).

A. Motion to Reopen

The Petitioner's motion includes copies of several documents, nearly all of which the Petitioner had submitted earlier. Re-submitted materials do not introduce *new facts* into the record, and therefore they do not provide a basis for reopening the proceeding. The only document that does not appear to have been submitted previously is a 2018 Media Kit for [redacted] *Brazilian News*, a Portuguese-language publication for Brazilian expatriates in the United States. The Petitioner's accompanying brief does not mention this particular document or explain its relevance to the motion.

The Petitioner had previously claimed coverage in [redacted] as an example of published material about him in professional or major trade publications or other major media, to satisfy the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii). In [redacted] 2015, a [redacted] article described the Petitioner as "without a doubt, one of the greatest reporters in Brazilian TV." The record shows that the Petitioner was previously a reporter for [redacted]

In our appellate decision, we determined that the Petitioner had not provided a basis for comparison to show that [redacted]s website constitutes major media. The media kit indicates that the website attracts more than 400,000 users per month, but does not provide a basis for comparison with other United States-based news sites.

The Petitioner has not shown cause for reopening the proceeding by establishing that the information in the [redacted] media kit would have changed the outcome of the appellate decision. The media kit introduces no relevant new facts into the record, and therefore the Petitioner's filing does not meet the requirements of a motion to reopen.

B. Motion to Reconsider

In our appellate decision, we discussed the six evidentiary criteria that the Petitioner claims to have satisfied, and we explained why we determined that the Petitioner had met only one of those criteria. On motion, the Petitioner claims to have satisfied five of the six criteria (including the one we already granted), but does not address the specific points we raised in our decision. Instead, portions of the motion brief repeat, almost verbatim, sections of the earlier appellate brief.

A motion does not entail *de novo* review of the full record of proceeding. The Petitioner cannot establish grounds for reconsideration by repeating or rewording prior arguments and assertions. To warrant reconsideration, the Petitioner must establish errors of *law or policy* (as documented by precedent decisions or other cited policy instruments), or errors of *fact* (through a showing the decision was incorrect based on the record as it stood at the time of the prior decision). It cannot suffice for the Petitioner simply to state reasons why he believes his petition should be approved. We conclude that the Petitioner has not established grounds for reconsideration of our appellate decision.

The motion to reconsider focuses on four of the evidentiary criteria, which we address below.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i)

The Petitioner had previously submitted evidence regarding several awards, and claimed other awards. The Director devoted more than a page of the original denial notice to a discussion of why the various awards did not meet the regulatory requirements, and determined that the Petitioner had not submitted supporting evidence regarding some of the claimed awards.

On appeal, the Petitioner stated that he "has received many awards," but there were only two that he identified and discussed in any detail in the appellate brief: a Brazilian International Press Award (BIPA) and an award from the [redacted] Association of Sports Writers of the State of [redacted] We determined that the Petitioner did not establish that these awards are nationally or internationally recognized awards for excellence in the field of journalism."

On motion, the Petitioner states that the BIPA "is one of the most important celebrations of Brazilian culture internationally," including "entries from Europe . . . and Asia." In our appellate decision, we acknowledged international *participation*, but determined that this does not establish the *recognition* of the award. The Petitioner does not explain how this conclusion was in error.

Also on motion, the Petitioner lists other awards he received, or claims to have received. The Director addressed these other awards in the denial notice, but the Petitioner offered no specific defense of those awards on appeal. By not contesting the Director's conclusions on appeal, the Petitioner effectively abandoned those claims.[1]

With respect to certain claimed awards, such as the [redacted] Film Festival, the Director stated that the Petitioner submitted "no documentary evidence of these awards." The Petitioner did not dispute this particular finding on appeal. On motion, the Petitioner revisits this abandoned claim,

[1] *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO). *See also Greenbriar, Ltd. v. City of Alabaster*, 881 F.2d 1570, 1573 n.6 (11th Cir. 1989) (stating that passing references to issues are insufficient to raise a claim for appeal, and such issues are deemed abandoned).

but rather than identify any evidence that he won an award at the festival, he asserts that the festival "is the premier event of its kind in North America," and that he "was recognized as having a significant impact and participation in [a prize-]winning documentary." Involvement in an award-winning film is not the same as *receipt* of a prize or award, which is what the regulation requires.

The Petitioner has not established that we erred in our appellate decision.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii)

In our appellate decision, we acknowledged the Petitioner's submission of published material about him, but we determined that evidence to be deficient for various reasons:

- An article about him on the website of [redacted] as submitted, did not include the title and author required by the regulation. As noted above, we determined that the Petitioner did not establish that [redacted]s website constitutes major media.
- A second online [redacted] article was written by, rather than *about*, the Petitioner.
- A 2018 podcast is deficient for several reasons: it occurred after the filing date; the partial transcript in the record did not clarify whether the podcast was *about* the Petitioner, as required, or instead the Petitioner participated in the podcast by providing commentary on a tennis match; and the Petitioner did not establish that the podcast constitutes major media.
- Photographs of the Petitioner on celebritypictures.wiki, presented without comment, are not published materials about him, and the Petitioner did not establish that the website constitutes major media.

On motion, the Petitioner repeats language from the earlier appellate brief, which does not establish error in the appellate decision that already addressed that brief. The Petitioner also quotes some of the materials submitted previously, but because our appellate decision did not dispute the content of the materials, quoting them does not establish error in that appellate decision.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

In the denial notice, the Director acknowledged the Petitioner's claim to have been "the moderator for the [redacted] International Press Awards and [redacted] Brazil debates," but the

Director determined that the Petitioner submitted "no documentary evidence" to support these claims, and had not shown that the claimed work as a moderator entailed judging the work of others.

On appeal, the Petitioner abandoned this claim, discussing instead his claim to have acted as "a judge for the 1994 [redacted] Award.'" We determined that the Petitioner had not established this judging activity was in the same or an allied field for which the Petitioner seeks classification.

On motion, the Petitioner does not dispute our conclusion in the appellate decision. Instead, the Petitioner returns to the [redacted] events that he abandoned on appeal. The Petitioner provides no new information about these events, and no basis for concluding that our prior decision was in error.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

In the denial decision, the Director acknowledged the Petitioner's submission of letters from various athletes and journalists, attesting to the Petitioner's skills as a sports journalist. The Director concluded that the letters did not establish that the Petitioner has made original contributions of major significance to the field of journalism.

On appeal, the Petitioner asserted: "His contributions can be seen in his artistic style of reporting in most international sports events such as the [redacted]," but did not elaborate. The Petitioner also highlighted his involvement in two short documentary films: [redacted] and [redacted].

In our appellate decision, we discussed the two documentary films and determined that the Petitioner had not shown them to be of major significance.

On motion, the Petitioner again quotes from letters in the record, in which various individuals attest in general terms that the Petitioner is a talented and respected member of his field. As the Director already noted in the denial notice, general praise of this type does not identify specific contributions or show how they are of major significance in the Petitioner's field.

The Petitioner does not address or rebut the specific conclusions in our appellate decision, and therefore, he has not shown that we erred in that decision.

IV. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of the appeal. The motion to reopen and motion to reconsider will be dismissed for the above stated reasons.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.